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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Review of the Commissions's Regulations Governing Attribution of Broadcast Interests	)	MM Docket No. 94-150
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

COMMENTS

EZ Communications, Inc. ("EZ"), which, through wholly-owned subsidiaries, is the owner of AM and FM broadcast stations in eight major markets, hereby submits its comments in response to the Commission's Notice of Proposed Rule Making ("NPRM"), FCC 94-324, released January 12, 1995, in the above-captioned proceeding.[1] As discussed in detail below, EZ urges the Commission to retain the single majority shareholder exception to the multiple ownership rules and to abolish the cross-interest policy insofar as it applies to non-attributable equity interests.

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[1] Specifically, EZ's subsidiaries are the licensees of the following stations: WSSS(FM) and WSOC-FM, Charlotte, North Carolina; KBEQ(AM), Blue Springs, Missouri, and KBEQ-FM, Kansas City, Missouri; WBYU(AM), WEZB(FM), and WRNO(FM), New Orleans, Louisiana; WIOQ(FM) and WUSL(FM), Philadelphia, Pennsylvania; WBZZ(FM) and WZPT(FM), Pittsburgh, Pennsylvania; KHTK(AM), KNCI(FM), and KRAK(FM), Sacramento, California; KYKY(FM), KSD(AM), and KSD(FM), St. Louis, Missouri; and KMPS(AM), KMPS(FM), and KZOK(FM), Seattle, Washington.

The FCC's current multiple ownership rules include an exemption from attribution for any minority voting stock interest if there is a single holder of more than fifty-percent of the outstanding voting stock of the corporate broadcast licensee.[2] In adopting this exemption in 1984, the Commission recognized that, when there is a single majority shareholder, the minority interest holders, even acting collaboratively, are unable to direct the affairs or activities of the licensee.[3]

EZ, the stock of which is publicly traded, has a single majority shareholder. The company's experience indicates that the prospect of non-cognizability for minority interests has a very positive effect on its ability to attract investors, particularly when the company must compete with wholly unregulated industries for that same capital. Presumably, the exemption is even more beneficial for small broadcasters who face tougher obstacles in the credit market and frequently find their borrowing needs exceed those that can be met at the local, retail bank level but are too small to gain the broadcasters any access

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[2] 47 C.F.R. § 73.3555, Note 2(b).

[3] Multiple Ownership Rules, 55 RR 2d 1465, 1475 (1984), recon., 58 RR 2d 604 (1985), further recon., 1 FCC Rcd. 802 (1986). On reconsideration, the Commission did not make any major changes to the exemption; the agency merely provided guidance as to how interests held by the same individual or entity were to be aggregated to determine availability of the exemption and stated that minority stockholders thrown into non-compliance by actions of a single majority shareholder would have a one-year transition in which to come into compliance. Multiple Ownership Rules, 58 RR 2d at 621-624.

to large institutional lenders. Sales of minority interests may be their only vehicle for raising funds.[4]

In the NPRM, without citing any documented abuses, the Commission expresses concern that a minority shareholder, in certain situations, may be able to exert significant control over the single majority stockholder and seeks comment as to whether the exemption should be restricted. An articulated goal of the attribution rules has been to provide certainty and consistency to regulated licensees and their investors. The single majority shareholder exemption has been in place for over a decade. The comments filed in the predecessor docket to this proceeding, Mass Media Docket 92-51, which have been incorporated in this record, did not express any need to modify the exemption. Moreover, very few alleged abuses of the exemption have been brought before the Commission in adjudications; the handful of published cases that do discuss the exemption do not reveal a pattern of abuse.[5]

To curtail the single majority shareholder exemption at this point, when there is no documentation of serious or overwhelming abuse, would be contrary to the Commission's professed interest in fostering investor certainty and consistency. It would also be inconsistent with the initiatives the Commission has taken in

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[4] Availability of the exemption may also have an effect on a company's ability to obtain loans from lending institutions that seek equity participation as a condition to making loans.

[5] BBC Licensee Subsidiary, L.P., FCC 95-179, released April 27, 1995; Iowa State University, 74 RR 2d 809 (1993); National Broadcasting Co., Inc., 69 RR 2d 1099 (1991); KKR Associates, L.P., 64 RR 2d 143 (1987); Metromedia Broadcasting Corp., 61 RR 2d 737 (1986).

the last decade to help broadcasters perform effectively against the increasingly intense competition that they face from other media players.

In those few instances in the past when the Commission has been asked to evaluate the bona fides of an asserted claim to the single majority shareholder exemption, the agency has turned to its well-established experience and body of cases evaluating transfers of control under Section 310(d) of the Communications Act. For instance, based on such cases, the Commission has acknowledged that the minority interest holder may have a vote on certain extraordinary corporate actions, principally to protect devaluation or dilution of its interests.[6]

Indeed, in Section 310(d) cases, the Commission has repeatedly said that, given the widely varying fact patterns that arise in the business world, it is impossible to adopt a precise, prospective formula or definition for assumption of control.[7] With that acknowledgement, it is difficult to see how the multiple ownership rules could be amended to effectively address vague concerns that a minority owner who takes advantage of the attribution exception may at some point in the future impermissibly infringe on the control of the majority interest holder. Section 310(d) case law provides adequate guidance for any cases that may occur. Given the current lack of any serious

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[6] National Broadcasting Co., Inc., 69 RR 2d at 1100.

[7] See, e.g., News International, PLC, 97 FCC 2d 349, 355 (1984); WHDH, Inc., 17 FCC 2d 856, 863 (1969).

pattern of abuse of the exemption, restricting it is factually and legally unsupportable.

Even if the Commission decides some limitation of the single majority shareholder exemption is warranted, EZ urges the Commission to grandfather all existing single majority shareholder exemptions and permit their continued availability for assignees and transferees in pro forma transactions. To make such a change without a grandfathering provision would, as the NPRM acknowledges at paragraph 15, seriously disrupt existing financial arrangements and would also interfere with estate and other financial plans that have been predicated on continued availability of the exemption.[8]

In the NPRM, the Commission also seeks comment on whether the three remaining aspects of the cross-interest policy -- key employee relationships, non-attributable equity interests, and joint venture arrangements -- should be eliminated. EZ strongly supports the Commission's interest in abolishing the cross-interest policy insofar as it applies to non-attributable equity interests.[9]

The cross-interest policy insofar as it pertains to non-attributable equity interests is a historical anomaly. The

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[8] See 47 C.F.R. § 73.3555, Note 4. For instance, heirs and legatees would be able to take advantage of the continued availability of the exemption.

[9] At this point, EZ does not take a position with respect to abolition of the other two aspects of the policy but reserves its right to comment on other parties' suggestions in reply comments.

Commission's current codified attribution and multiple ownership rules have superseded the policy, and its retention at times interferes with operation of those rules. For instance, while the multiple ownership rules make ownership of a significant minority interest non-attributable when a single majority shareholder is present, the cross-interest policy raises questions as to whether such an interest is permissible. In all reported cases considering whether a non-attributable equity interest otherwise shielded by the single majority shareholder or another attribution exemption violates the cross-interest policy, the Commission has consistently responded in the negative.[10]

Particularly in larger markets where there is a plethora of media voices, the cross-ownership policy no longer serves any effective purpose. The Commission has so recognized in the past by finding no cross-interest violation.[11] If the Commission finds that for some reason it should retain the cross-interest policy as it pertains to non-attributable equity interests, the agency should at least exempt interests in properties in media markets that have a significant number of other media owners or "voices." Any other result would require the FCC and applicants

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[10] E.g., Telemundo Group, Inc., 77 RR 2d 308, 312 (1994) (non-voting interests); Metromedia Broadcasting Corp., 61 RR 2d at 738-39 (voting interest non-attributable because of single majority shareholder).

[11] Telemundo Group, Inc., 77 RR 2d at 312 (Los Angeles); Martin R. Leader, Esq., 66 RR 2d 260 (1989) (New York City).

to spend unnecessary time and effort evaluating factors that up until now have not resulted in a denial of an application.[12]

In short, there is no defensible reason to curtail the single majority shareholder exemption. Moreover, it is unlikely that any limitation the Commission may devise could prospectively address all concerns about inappropriate control that may arise. Similarly, there is no justifiable reason for retaining the cross-interest policy insofar as it pertains to non-attributable ownership interests. The Commission should act promptly to abolish the cross-interest policy.

Respectfully submitted,

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[12] If there are extraordinary cases in which cumulative factors raise concerns that the policies behind the multiple ownership rules are being undermined, the Commission can look at the cases on an <u>ad hoc</u> basis. Retention of the cross-interest policy, as such, does not advance those purposes and wastes agency and private resources.